IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No.	:	10/682,088
Applicant	:	Hamid Mahmood, et al
Filed	:	October 10, 2003
TC/A.U.	:	2419
Examiner	:	Abelson, Ronald B.
Docket No.	:	77682-519
Customer No.	:	07380

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Commissioner for Patents
Alexandria, VA 22313-1450
U.S.A.

Dear Sir:

Pre-Appeal Brief Request for Review

Applicants request review of the final rejections issued in connection with the above-identified application on September 25, 2008. A Notice of Appeal has been submitted concurrently herewith.

The Examiner has stated that claims 1 to 8, 11 to 18 and 21 to 29 are unpatentable under 35 U.S.C. 103(a) over Alriksson *et al.* (U.S. Patent No. 6,977,938, hereinafter Alriksson) in view of Dolganow *et al.* (U.S. Patent Publication No. 2006/0123110, hereinafter Dolganow), McAllister *et al.* (U.S. Patent Publication No. 2001/0010681, hereinafter McAllister) and further in view of "IEEE 100 The Authoritative Dictionary of IEEE Standards Terms Seventh Edition", 2000 (hereinafter IEEE 100 Dictionary).

Applicants submit that Dolganow describes a system that is substantially the same as what is described at page 4, starting at line 8, of the present application (see page 5 of the Office Action response filed July 27, 2009), namely a network in which a network node performs routing of a packet through the network in which last hop wireless link conditions, that is the conditions of a wireless access link between the wireless terminal and the access node, are not considered in the routing selection. In the present claims, it is a wireless link between the wireless communications terminal and the network that is used for receiving network information. Therefore, from the perspective of the claim as a whole, Applicants submit that it is particularly relevant that Dolganow does not disclose or pertain to a wireless terminal having functionality recited in claim 1. Therefore, Applicants submit that Dolganow does not disclose "in the terminal: receiving, via a respective wireless link from at least one of a plurality of wireless access nodes forming a network, network information relating to links between the nodes", as recited in claim 1.

Applicants submit that McAllister is another example of a network in which a network node performs selection of a route, not a wireless terminal in communication with a node of the network, performing selection of a route, as recited in claim 1. Applicants submit that McAllister, in view of the disclosure at paragraph [0007] of McAllister (i.e. the use of link costs) is a particularly good example of what is described in the present application on page 8, namely "known route selection processes take place in the nodes of the network, and link state messages are only exchanged between the nodes". Clearly, there is no discussion in McAllister regarding using "information dependent upon wireless communications between the terminal and a least one of the nodes" (emphasis added), which includes last hop wireless link conditions between the wireless terminal and an access node of the network, in selecting a route for the packet.

Claim 1 recites that selecting a route is performed "from the terminal in dependence upon the network information and information dependent upon wireless communications between the terminal and a least one of the nodes" (emphasis added). Applicants submit that since the network information is recited as being received by the terminal and the information dependent upon wireless communications is not recited as being received at the terminal, the information dependent upon wireless communications is inherent to the terminal resulting from wireless communications with a one hop away network node. Furthermore, since the "information" is recited as information that is dependent upon wireless communications between the terminal and at least one of the nodes, Applicants submit that this is information based on a link between the terminal and at least one node. Since it is a wireless link, the link is range limited and does not necessarily include every link to every node in the network. The wireless communications between the terminal and a least one of the nodes are typically a link between the terminal and a node a first hop away from the terminal, also considered to be "the last hop wireless link between the terminal and the network", page 9, lines 8-9 of the present application. Therefore, Applicants submit that the combination of Dolganow and McAllister fails to disclose selecting a route "from the terminal in dependence upon the network information and information dependent upon wireless communications between the terminal and a least one of the nodes"

With respect to the equating of the definition of source routing in the IEEE 100 Dictionary with "selecting a route from the terminal", Applicants respectfully disagree with the Examiner's interpretation of the definition of "source routing" as defined in the IEEE 100 Dictionary, which has led to the Examiner alleging the definition would encompass "selecting a route from the terminal".

Applicants submit that there is nothing in the definition that would lead one skilled in the art to the conclusion that source routing is performed by a wireless communications terminal as recited in claim 1 of the present application. The Examiner has apparently equated the terms "transmitter" and "source" with a wireless communications terminal. Applicants submit that there is no reason on the face of the definition that would lead to such a conclusion.

In the "Response to Arguments" section on pages 10 and 11 of the Final Office Action, the Examiner introduces U.S. Patent 5,802,056 (Ferguson et al.) as evidence that at the time of Publication of the IEEE 100 Dictionary source routing was known to include end users, originating parties and wireless communication terminals. Applicants submit that Ferguson et al. does not make any specific disclosure of data terminal equipment (DTE) being wireless communication terminals.

The publication date of the IEEE 100 Dictionary is 2000. Both Dolganow and McAllister are directed to network nodes, which are not endpoints of the network, performing the source routing. These two references include network endpoints that are identified as "users" in McAllister and "Originating Parties" in Dolganow. Neither of these references contemplates the users and Originating Parties as performing source routing. The McAllister application was filed on March 22, 2001 and the Dolganow application is a continuation of an application that was filed on June 11, 2001. Both dates are subsequent to the publication date of the IEEE 100 Dictionary. If the definition of source routing is that which is alleged by the Examiner, then it would seem likely that the McAllister and Dolganow applications would have suggested the possibility of the users and Originating Parties, respectively, performing the source routing, as the applications both having filing dates subsequent to the IEEE 100 Dictionary publication date. However, neither reference suggests such a possibility.

Applicants respectfully submit that the Examiner has not established that one skilled in the art would understand the definition for "source routing" disclosed in the IEEE 100 Dictionary to include a wireless communication terminal as a "source", as opposed to nodes in a network that are not end users performing routing, and as such has incorrectly equated what is disclosed in the IEEE 100 Dictionary and what is recited in the independent claims.

For at least the reasons discussed above, Applicants respectfully submit that the combination of Alriksson, Dolganow, McAllister and IEEE 100 Dictionary does not teach all of the limitations recited in claim 1, as alleged by the Examiner. Furthermore, the Examiner has failed to explain why the missing features would be obvious to one skilled in the art. Without all the limitations of claim 1 being disclosed by the four references and no reason provided by the Examiner why these missing limitations would be obvious, it is not reasonable to expect that the combination of references would render claim 1 of the present invention obvious.

Reason to Combine

Once the scope of the prior art is ascertained, the content of the prior art must be properly combined. Even if the Patent Office is able to articulate and support a suggestion to combine the references, it is impermissible to pick and choose elements from the prior art while using the application as a template.

Applicants submit that the Examiner's selection of Alriksson is based on hindsight selection solely for its disclosure of a wireless terminal. The Examiner concedes that Alriksson does not disclose any of the steps of the method performed by the wireless device in claim 1 of the present application. As Alriksson does not disclose the active method step limitations of claim 1, which are alleged to be disclosed by the other three references, it is improbable that one skilled in the art would consider such a reference in combination with the other three references, none of which discloses wireless terminal functionality.

In addition, Applicants submit that there is no suggestion of a desirability of the claimed invention in the references that would serve as a reason for one skilled in the art to combine the references. Applicants submit that the Examiner has failed to provide a suitable explanation of why one would combine the four cited references when the three references being relied upon for the majority of the steps of the method claim are unrelated to wireless communications.

Applicants respectfully submit that while Dolganow and McAllister may disclose source routing from a network node, neither reference suggests or discloses taking into consideration "information dependent upon wireless communications between the terminal and a least one of the nodes". Despite the Examiner's allegation that a network node can be considered a source/terminal, Applicants submit that it is inappropriate to equate the network nodes of Dolganow and McAllister with a wireless communication terminal, when the network nodes of Dolganow and McAllister clearly do not have the functionality of a wireless communications terminal capable of utilizing "information dependent upon wireless communications between the terminal and a least one of the nodes", as recited in claim 1.

Applicants submit that since Dolganow and McAllister do not disclose a wireless terminal receiving network information and selecting a routing path for a packet based on network information and information dependent upon wireless communications between the terminal and a least one of the nodes, but instead disclose a network node that does not consider information dependent upon wireless communications between the terminal and a least one of the nodes, each of Dolganow and McAllister teach away from a wireless terminal receiving network information and selecting a routing path for a packet based on network information and information dependent upon wireless communications between the terminal and a least one of the nodes. Applicants submit that this is a reason that one skilled in the art would not combine Dolganow and McAllister with Alriksson in the manner alleged by the Examiner.

For at least the reasons discussed above, Applicants submit that the Examiner has failed to provide a suitable reason for combining the cited references.

Applicants submit that the Examiner has failed to meet the initial burden of establishing a *prima facie* case of obviousness in view of limitations of claim 1 not being disclosed by the combination of

references and failure to provide a suitable reason for combining the references. It is respectfully requested that the Examiner reconsider and withdraw the obviousness rejection to claim 1.

Claims 14 and 24 are additional independent method claims that recite respective methods that are performed in the terminal. Claim 27 is an independent claim directed to a method of "routing packets from a wireless communication terminal via nodes of a network" wherein the steps are controlled by the wireless communication terminal. Claim 28 is an independent claim directed to a method of communication in a wireless access node of a network wherein the node receives packets including routing information selected by the wireless communication terminal. As claims 14, 24, 27 and 28 all pertain to a wireless terminal operating in a similar fashion to claim 1, Applicants submit that claims 14, 24, 27 and 28 patentably distinguish over Alriksson, Dolganow, McAllister and the IEEE 100 Dictionary. It is respectfully requested that the Examiner reconsider and withdraw the obviousness rejection of claims 14, 24, 27 and 28.

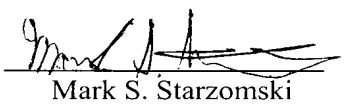
Claims 2 to 8, 11 to 13, 21 and 22 are dependent, either directly or indirectly, on claim 1. Claims 15 to 18 and 23 are dependent, either directly or indirectly, on claim 14. Claims 25 and 26 are dependent, either directly or indirectly, on claim 24. Claim 29 is dependent on claim 28. For at least the reason of their dependence on claims 1, 14, 24 and 28, Applicants submit that dependent claims 2 to 8, 11 to 13, 15 to 18, 21 to 23, 25, 26 and 29 patentably distinguish over the combination of Alriksson, Dolganow, McAllister and the IEEE 100 Dictionary. It is respectfully requested that the Examiner reconsider and withdraw the obviousness rejection of the identified dependent claims.

Claims 9, 10, 19 and 20 have been rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Alriksson, Dolganow, McAllister and the IEEE 100 Dictionary and in view of other references. Claims 9 and 10 depend indirectly on claim 1 and claims 19 and 20 depend directly on claim 14. In view of Applicants' submission regarding the 35 U.S.C. 103 rejection of claims 1 and 14, dependent claims 9, 10, 19 and 20 are also patentable over the cited art. In view of the above discussion, the Examiner is respectfully requested to withdraw the 35 U.S.C. 103 rejections of claims 9, 10, 19 and 20.

In view of the foregoing, Applicants respectfully request the Final Office Action be withdrawn.

Respectfully submitted,

HAMID MAHMOOD, ET AL.

By 
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Dated: November 25, 2009

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